From: Patrick Greenwell
To: Microsoft ATR
Date: 1/23/02 8:39pm
Subject: Microsoft Settlement

As a long-time technologist and small business owner, I am adamantly opposed to the proposed final judgment in United States v. Microsoft.

The first glaring problem with the proposed judgment is that there are no punitive penalties related to Microsoft's' past illegal, and anti-competitive behavior. Rather it attempts to simply modify their behavior in the future. Microsoft is directly and indirectly responsible for putting countless businesses and individuals out of work through their illegal actions. They should be made to pay for their past misdeeds rather than simply promising "not to do it again."

Second, as someone with over 15 years in the computer industry, the proposal as written is rife with countless examples of conditions, loopholes, and exceptions that aid Microsoft to the point of rendering this agreement as written nearly worthless.

These include:

- o III.c.3 forces organizations wishing to run a post-boot middle-ware product to either display no user interface, or one that is consistent with Microsoft's own interface. This clause significantly hinders other parties ability to determine look, feel, and to provide additional functionality which requires a different interface.

- o The unwritten requirements in III.D "Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of inter-operating with a Windows Operating System Product via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middle-ware to inter-operate with a Windows Operating System Product."

  What this language illustrates is that in order to gain access to interoperability information, one would have to have a business relationship with Microsoft as an ISV, IHV, IAP, ICP or OEM which would undoubtedly be tied to a separate lengthly and restrictive licensing agreement.

  Interoperability information should be freely available to anyone who wishes it. A business relationship with Microsoft should not be required in order to determine how to make ones software work with their software.

- o Section III.G.1 states that "Microsoft shall not enter into any

agreement with any IAP, ICP, ISV, IHV or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software, except that Microsoft may enter into agreements in which such an entity agrees to distribute, promote, use or support Microsoft Platform Software in a fixed percentage whenever Microsoft in good faith obtains a representation that it is commercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with Microsoft Platform Software,"

This clause does absolutely nothing to aid anyone other than Microsoft. It allows Microsoft to contravene the intent of earlier sections which were aimed at preventing Microsoft from punishing their partners who chose to use other parties software. Instead of being punished, Microsoft is simply enabled to "reward" those who "distributes, promotes, uses, or support" Microsoft Platform Software at any fixed percentage they wish(100% is a percentage for example.) By "rewarding" partners that use all Microsoft products Microsoft can continue to make it financially unrealistic for manufacturers in the highly-competitive industry to not use Microsoft products and forego the "rewards" that Microsoft provides.

o III.H.2 allows Microsoft to require confirmation for installation of Non-Microsoft middle-ware. What it does not do is state the nature of the confirmation(is it a one step process, a ten step process, etc.) nor does it offer any guidance as to the language to be used. As written, this clause would allow Microsoft to require a twenty-step process with language that reads "WARNING replacing this software could seriously damage your operating system or machine" throughout in order to replace Microsoft middle-ware.

o III.J.1 offers an exemption from disclosure of any APIs or documentation that would "compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria"

One of the ways in which Microsoft could avoid disclosure of large amounts of data would be to simply make the claim that disclosure would "compromise security" any time they did not wish to disclose something and then utilize their innumerable resources to press those claims. Further, there are already products that exist which require knowledge of Microsoft authentication mechanisms, namely SAMBA(http://www.samba.org). This clause as written would actually allow Microsoft to put this project out of business by denying them access to information.

Third, Section IV.B borders on the ludicrous. What is being agreed to is that Microsoft, convicted of multiple illegal acts, gets a 50% say in choosing who is appointed to determine if they are perpetrating additional crimes from a technical perspective.

Microsoft should have absolutely zero say in who is appointed to judge their compliance, just as I would not be able to choose a particular judge if I were accused of committing a crime.

Were this not bad enough, IV.B.d renders the Technical Compliance Committee worthless by prohibiting the admission of their work or finding in enforcement proceeding for any reason, and forbidding them to testify on any matter related to the judgment.

As written this proposed cure does nothing to address Microsoft's' past misdeeds, offer little if any protection to consumers, and allows Microsoft to continue to perpetrate many of the crimes it has been found guilty of.

For all of the reasons outlined above, I urge you to reject this proposal outright, or at a minimum require significant modification.

Sincerely,

Patrick Greenwell

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Patrick Greenwell
Stealthgeeks,LLC. Operations Consulting
http://www.stealthgeeks.net
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